

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SALVADOR QUIRINO-MORALES, )  
Petitioner, ) CASE NO. C13-0327-MJP-MAT  
v. )  
NATHALIE R. ASHER, Seattle Field Office ) REPORT AND RECOMMENDATION  
Director, Immigration and Customs )  
Enforcement, )  
Respondent. )

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15 On February 11, 2013, petitioner, proceeding *pro se*, filed a petition for writ of habeas  
16 corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his immigration detention  
17 and seeking release from immigration detention or a bond hearing before an immigration judge.  
18 *Morales v. ICE Field Office Director*, C13-232-RAJ-BAT. The Court issued an Order for  
19 Service and for Return and Status Report on February 12, 2013, directing respondent to file a  
20 return within 30 days of service. *Id.*, Dkt. No. 3. Respondent's have filed a Return and  
21 Motion to Dismiss in that case, which is currently noted for consideration on April 12, 2013.  
22 *Id.*, at Dkt. No. 8.

01       On February 21, 2013, petitioner, proceeding through counsel Michael Jacob, filed a  
02 second Petition for Writ of Habeas Corpus in the instant case. *Quirino-Morales v. Asher*,  
03 C13-327-MJP-MAT, Dkt. No. 1. This petition also challenges petitioner's immigration  
04 detention and seeks an order requiring respondent to provide him with an individual bond  
05 hearing by an immigration judge. The Court issued an Order for Service and for Return and  
06 Status Report on February 25, 2013, requiring respondent to file a return within 30 days of  
07 service. *See id.*, Dkt. No. 4. Respondents' return is presently due in this case on or about  
08 March 28, 2013.

09       On March 8, 2013, respondent filed a Joint Stipulation and Order Consolidating Cases  
10 in the first case, seeking to consolidate that case with the instant case under Case No.  
11 C13-232-RAJ-BAT, on the grounds that the petitions are duplicative. *See Morales*,  
12 C13-232-RAJ-BAT, Dkt. No. 7. Although respondent submitted a joint stipulation signed by  
13 Mr. Jacob, the Court notes that Mr. Jacob has not appeared as counsel of record in that matter.

14       In light of these facts, the Court ordered petitioner to move for voluntary dismissal of  
15 the instant habeas corpus action or show cause why it should not be dismissed as duplicative.  
16 (Dkt. No. 8.) Pursuant to the Court's Order, petitioner's response was due on March 25, 2013.  
17 To date, petitioner has neither moved for voluntary dismissal of this action nor shown cause  
18 why it should not be dismissed as duplicative.

19       “After weighing the equities of the case, the district court may exercise its discretion to  
20 dismiss a duplicative later-filed action, to stay that action pending resolution of the previously  
21 filed action, to enjoin the parties from proceeding with it, or to consolidate both actions.”  
22 *Adams v. California Dept. of Health Services*, 487 F.3d 684, 688 (9th Cir. 2007). “Plaintiffs

01 generally have ‘no right to maintain two separate actions involving the same subject matter at  
02 the same time in the same court against the same defendant.’” *Id.* (quoting *Walton v. Eaton*  
03 *Corp.*, 563 F.2d 66, 70 (3d Cir. 1977) (en banc)).

04 In assessing whether a second action is duplicative of the first, the Court examines  
05 whether the causes of action, relief sought, and the parties are privy to the action are the same.  
06 *Id.* at 689. First, the Court must examine whether the causes of action are the same pursuant to  
07 the transaction test developed in the context of claim preclusion. *Id.* Second, the Court  
08 determines whether the defendants are the same or in privity. *Id.* at 691. A plaintiff is  
09 required to bring at one time all the claims against a party or privies relating to the same  
10 transaction or event. *Id.* at 693. The Court has discretion to dismiss a later-filed complaint  
11 with prejudice to prevent a plaintiff from “fragmenting a single cause of action and []  
12 litigat[ing] piecemeal the issues which could have been resolved in one action.” *Id.* at 694  
13 (quoting *Flynn v. State Bd. of Chiropractic Examiners*, 418 F.2d 668, 668 (9th Cir. 1969)).

14 Here, it is apparent that the instant habeas action, the relief sought, and the parties  
15 involved are identical to the earlier-filed habeas action. Accordingly, the Court finds that the  
16 instant petition is duplicative of the petition in Case No. C13-232-RAJ-BAT, and this case  
17 should be dismissed with prejudice. A proposed Order accompanies this Report and  
18 Recommendation.

19 DATED this 3rd day of April, 2013.

20 

21 Mary Alice Theiler  
22 United States Magistrate Judge